Supreme Court, U.S.
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No. _____

In The
Supreme Court of The United States
October Term 1998

L. D. and NILA OWENS McMULLEN,
Petitioners,

v.

NATIONAL BANK OF COMMERCE,
Respondent.

Petition For A Writ Of Certiorari To The United States Court of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

ROBERT L. DEPPER, JR.*
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93 PP

QUESTIONS PRESENTED FOR REVIEW

I.

The Equal Credit Opportunity Act, 15 U.S.C. 1691, et seq, prohibits a lender from requiring a spouse to join in the loan of another spouse unless the latter does not meet credit requirements.

The appellants herein asserted in the United States Bankruptcy Court of the Western District of Arkansas that the National Bank of Commerce violated the Equal Credit Opportunity Act in that it required Nila McMullan to be a signatory to the loan in question when, in fact, such was not necessary given the fact that L. D. McMullan was credit worthy. Therefore, it is asserted that the signature of Nila McMullan was obtained in violation of the ECOA. Thus, it was asserted that there was established a recoupment defense.

The question presented is:

Did the appellate court properly affirm the decision of the Honorable Harry F. Barnes and the Honorable James G. Mixon when Judge Mixon ruled that there was no violation of the Equal Credit Opportunity Act.

II.

In the litigation heard before the Honorable Judge Mixon, Judge Mixon had to consider whether there occurred

accord and satisfaction when the debtors gave a deed to the National Bank of Commerce for a parcel of realty in Louisiana in allegedly total satisfaction of the debt. The deed was never recorded. The Honorable Judge Mixon ruled that the giving of the deed that was never recorded did not rise to the level of accord and satisfaction. There is some question as to whether such a ruling by Judge Mixon is contrary to Louisiana Title 3, C.C. Art. 1839.

The question presented is:

Did the appellate court properly conclude that the decisions of the Honorable Judge Mixon and subsequently the Honorable Harry Barnes were correct when they concluded that the giving of an unrecorded deed to realty in Louisiana was not an accord and satisfaction?

III.

The Honorable Judge Mixon in a previous Chapter 7 bankruptcy of just L. D. McMullan did, on January 23, 1991, enter an order that in effect said that the claim of the National Bank of Commerce was to be denied as relates to L. D. McMullan. This denied claim is the claim that has been resurrected in the case at bar. L. D. McMullan asserted before the 8th Circuit Court of Appeals that the order of Judge Mixon dated January 23, 1991, barred the current claim of the National Bank of Commerce in the case at bar. The principles that would bar the assertion by the National Bank of Commerce would be collateral estoppel and/or law of the case

as it could be argued that Judge Mixon's ruling in L. D. McMullan's Chapter 7 case eliminated the claim of the National Bank of Commerce. Though the above-described order was introduced of record, there is no evidence of the order ever having been argued at trial or in post-trial briefs, a point which is perhaps better served to be addressed on remand so as to give the trial court full opportunity to fully explore the issue.

The question presented is:

Did the appellate court properly conclude that there was no need for a remand of this case.

LIST OF PARTIES TO THE PROCEEDINGS

The parties to the proceedings below and before this Court are the petitioners, L. D. McMullan and Nila McMullan of El Dorado, Arkansas, and the National Bank of Commerce of El Dorado, Arkansas.

TABLE OF CONTENTS

Questions Presented for Review i
List of all Parties ii
Table of Contents iii
Table of Authorities iv
Opinions Below .....
Jurisdiction .....
Statutes Involved .....
Statement of the Case .....
Argument .....
Conclusion .....
Appendices

TABLE OF AUTHORITIES

Federal Deposit Ins. Corp. vs. Notias,
602 A.2d 1164 (Me., 1992) 4

Intergra Bank/Pittsburgh vs. Freeman,
839 F.Supp. 326(D.C.E.D.Pa., 1993) 4

Equal Credit Opportunity Act,
15 U.S.C. § 1691, et seq. . . . . viii, 1

28 U.S.C. § 1254 viii

28 U.S.C. § 1291 viii

United States Supreme Court Rule 13.1 vii

Louisiana Title 3, C.C. Art. 1839. . . . . ii, viii, 5

PETITION FOR WRIT OF CERTIORARI

The petitioners, L. D. McMullan and Nila McMullan, pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eighth Circuit which was rendered on June 9, 1998.

OPINIONS BELOW

In this matter, the United States of Appeals for the Eighth Circuit entered a judgment on June 9, 1998, which affirmed the decision of the Honorable Barnes of the United States District Court, Western District of Arkansas, El Dorado Division. The judgment of Judge Barnes for which the appeal to the Eighth Circuit was taken was filed on June 10, 1998. Judge Barnes had affirmed the decisions of the Honorable Judge Mixon that Judge Mixon had entered in the United States Bankruptcy Court, Western District of Arkansas, El Dorado Division, on April 18, 1996, and as subsequently modified in an order dated June 10, 1996.

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was entered on June 9, 1998, affirming the decisions of the District Court judge, the Honorable Harry Barnes, and the Bankruptcy Court judge, the Honorable James Mixon.

Pursuant to Rule 13.1 of the Rules of the Supreme

Court of the United States, L. D. McMullan and Nila McMullan have filed their petition for writ of certiorari within the 90 days plus extensions authorized by the United States Supreme Court.

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254. The order of the District Court from which an appeal was taken to the Court of Appeals was a final order and jurisdiction of the Court of Appeals was proper under 28 U.S.C. § 1291.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Credit Opportunity Act, 15 U.S.C. § 1691(a) states:

> It shall be unlawful for any creditor to discriminate against any applicant with respect to any aspect of the credit transaction (1) on the basis of. . . sex or marital status.

Louisiana Title 3, C.C. Art. 1839, states, "A transfer of immovable property must be made by authentic act or by act under private signature."

Additionally, 28 U.S.C. § 1254 provides as follows:

Cases in the Court of Appeals may be reviewed by the Supreme Court by the following method (1) by writ of certiorari granted upon the petition of any party to a civil or criminal case before or after rendition of judgment or decree.

STATEMENT OF THE CASE

In this Chapter 11 case, the National Bank of Commerce of El Dorado, Arkansas sought to foreclose certain liens that it believed it had obtained on assets of Mr. and Mrs. L. D. McMullan. The bank contended that it had a valid and perfected interest in certain real and personal property consisting of oil leases and personal property used in connection with the oil leases and an office building located in El Dorado, Arkansas. The oil properties were located in Louisiana and the commercial real estate was located in El Dorado, Arkansas.

Before the Honorable Judge Mixon, the bank sought a judgment against Mrs. McMullan and an order of foreclosure against Mrs. McMullan. The bank also sought an in rem judgment against Mr. McMullan on the issue of the oil leases, the personal property used in connection therewith and the office building located in El Dorado, Arkansas.

The debtors asserted before the Honorable Judge Mixon that the oil and gas properties and related equipment located in Louisiana had previously been transferred to the National Bank of Commerce and that therefore, an accord and satisfaction occurred. The McMullans also alleged an Equal Credit Opportunity violation by the National Bank of Commerce in that the bank required Nila McMullan to be a signatory on the documentation involved in creating and documenting the debt that is the subject of the litigation.

L. D. McMullan has also asserted that in a bankruptcy

prior to the one that is involved in the case at bar, the Honorable Judge Mixon had barred the claim of the National Bank of Commerce for the very same debt that is the subject of the present litigation and that as such, the principles of collateral estoppel and/or law of the case bars the claim of the National Bank of Commerce in the present case.

Judge Mixon, in his decision of April 18, 1996, granted the National Bank of Commerce a judgment against Nila McMullan personally in the amount of $639,042. He also entered a personal judgment in favor of the National Bank of Commerce against L. D. McMullan in the amount of $29,248.36. This order was subsequently amended on or about June 7, 1996, when his Honor eliminated the personal judgment against L. D. McMullan and reduced the judgment against Nila McMullan to $609,794. In rendering his decision, the Honorable Judge Mixon wrote an extensive memorandum opinion. It is this judgment in the amount of $609,794 against Nila McMullan for which L. D. McMullan and Nila McMullan take exception.

REASONS FOR GRANTING THE WRIT

I.

THE ACTION OF THE COURT OF APPEALS IN SUSTAINING THE LOWER COURT'S RULING THAT THERE WAS NO VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT IS CONTRARY TO THE LAW AND FACT.

The facts in this case establish that the National Bank of Commerce for years had made numerous business loans to just L. D. McMullan, via loans being made for what were referred to as the Manorado Project and the Bobby Slack Project. These loans were refinanced on May 7, 1986, and were in the nature of additional advances on previous debt obligations of L. D. McMullan. In refinancing the Manorado Project and the Bobby Slack Project with additional advances, the National Bank of Commerce took no financial statements from Nila McMullan. It just required Nila McMullan to be a signatory. Such action on the part of the bank, it is believed, is in direct violation of the Equal Credit Opportunity Act in that the National Bank of Commerce illegally required Nila McMullan's signature upon the loan paperwork. If Nila McMullan's interpretation of the facts and the law is correct, National Bank of Commerce would be barred from collecting

the alleged debt. Intergra Bank/Pittsburgh vs. Freeman, 839 F.Supp. 326 (D.C.E.D.Pa., 1993). See also Federal Deposit Ins. Corp. vs. Notias, 602 A 2d 1164 (Me., 1992)

II.

THE COURT OF APPEALS' RULING WAS TOTALLY CONTRARY TO THE STATE LAWS OF THE STATE OF LOUISIANA WHEN IT AFFIRMED THE HONORABLE HARRY BARNES' DECISION AND THE HONORABLE JUDGE MIXON'S DECISION THAT A GIVING OF A DEED THAT SUBSEQUENTLY WAS NOT RECORDED DID NOT RISE TO THE LEVEL OF ACCORD AND SATISFACTION.

In December of 1989, when controversy occurred between the National Bank of Commerce and L. D. McMullan relative to payment of the debt that is the subject of this litigation, Carol Crafton Anthony who was the then lawyer representing National Bank of Commerce forwarded to Mr. Henry Kinslow, counsel who was then representing Mr. and Mrs. McMullan, quitclaim deeds on oil and gas properties located in Louisiana. Ms. Anthony requested of Mr. Kinslow that the McMullans deed the Louisiana property to the National Bank of Commerce in lieu of foreclosure on the debt

that is the subject of this litigation. The McMullans executed the deeds. The fact of the land being transferred to the National Bank of Commerce in lieu of foreclosure is evidenced by a letter dated December 12, 1989, to Henry Kinslow signed by Carol Crafton Anthony. See the Defendant's Exhibit No. 3 to Trial Exhibit No. 28, which is the deposition of Carol Crafton Anthony.

The Honorable Judge Mixon addressed the question of whether the giving of the deed to Louisiana property in lieu of foreclosure rose to the level of being an accord and satisfaction.

The deed was never recorded.

The Honorable Judge Mixon concluded that to have an accord and satisfaction, the deed had to have been recorded.

It is the position of L. D. McMullan and Nila McMullan that his Honor, Judge Mixon, misconstrued when and how title passes in the State of Louisiana. In accordance with Louisiana Title 3, C.C. Art. 1839, "A transfer of immovable property must be made by authentic act or by act under private signature."

Such being the case, it is believed that Judge Mixon simply misapplied or did not properly consider the Louisiana statute relative to when transfer of realty is effected for purposes of transferring title in the State of Louisiana.

III.

THE COURT OF APPEALS COMMITTED ERROR WHEN IT DID NOT REMAND THE CASE BACK TO THE DISTRICT COURT FOR PURPOSES OF CONSIDERING THE EFFECTIVE IMPACT OF JUDGE MIXON'S DECISION OF JANUARY 23, 1991, THAT THE NATIONAL BANK OF COMMERCE'S CLAIM WAS BARRED IN A PREVIOUS BANKRUPTCY OF L. D. McMULLAN.

On January 23, 1991, in a Chapter 7 bankruptcy petition filed by L. D. McMullan, the Honorable Judge James Mixon ruled that because the National Bank of Commerce had failed to file a response to the Trustee's objection to the claim, the claim of National Bank of Commerce was denied. The Trustee had objected because the Trustee concluded in his objection that the National Bank of Commerce claim had been liquidated. A question therefore is raised as to what impact the denial of the National Bank of Commerce's claim in a previous bankruptcy of L. D. McMullan would have in the current bankruptcy. This issue was not addressed by Judge Mixon or the Eighth Circuit Court of Appeals. (Documents relating to the 1991 Bankruptcy proceeds are contained in Appendix D. The "Notice of Opportunity to Respond to Notice of Final Report of tlhe Trustee, Applications for

Compensation, Abandonment of Property, and Proposed Distriction to Claimants" was lodged with the Clerk of the Supreme Court of the United States at the time of the filing of this petition.)

The case should be remanded to the Bankruptcy Court for further assessment.

CONCLUSION

Wherefore, it is respectfully requested that this Court grant the petition for writ of certiorari so that the questions set forth herein may be more fully addressed in a brief and oral argument.

Respectfully Submitted,

DEPPER LAW FIRM
Robert L. Depper, Jr.,*
Attorney for appellants
Bar Number 81046
314 East Oak
El Dorado, AR 71730
(870) 862-5505

Counsel of Record

APPENDIX A

THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

September 17, 1998

Mr. Robert L. Depper Jr.
314 East Oak
El Dorado, AR 71730

Re: L. D. McMullan, et ux.
v. National Bank of Commerce
Application No. A-219

Dear Mr. Depper:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on September 17, 1998, extended the time to and including October 6, 1998.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By

/s/ Loretta S. Ruffin
Loretta S. Ruffin
Assistant Clerk

NOTIFICATION LIST

Mr. Robert L. Depper Jr.
314 East Oak
El Dorado AR 71730

Mr. Charles R. Camp
Invester, Skinner & Camp
111 Center St., Ste. 1200
Little Rock, AR 72201

Mr. William I. Prewett
P. 0. Box 1917
El Dorado AR 71731

Mr. Charles Tucker
U. S. Trustee
500 S. Broadway, Ste. 201
Little Rock, AR 72201

Clerk
United States Court of Appeals for
the Eighth Circuit
511 U.S. Court & Customs House
1114 Market Street
St. Louis, MO 63101

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE
EIGHTH CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 97-1086WAED		
L.D. McMullan;	*	
Nila Owens McMullen,	*	
Appellants,	*	Appeal from the United
	*	States District Court for
v.	*	the Western District of
	*	Arkansas
National Bank	*	
of Commerce,	*	
Appellee.	*	

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

June 9, 1998

A true copy.

ATTEST: /s/ Michael E. Gans
CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 97-1086

L.D. McMullan;	*	
Nila Owens McMullen,	*	
Appellants,	*	Appeal from the United
	*	States District Court for
v.	*	the Western District of
	*	Arkansas
National Bank	*	
of Commerce,	*	[UNPUBLISHED]
Appellee.	*	

Submitted: June 3, 1998
Filed: June 9, 1998

Before BOWMAN, Chief Judge, WOLLMAN, and BEAM, Circuit Judges.

PER CURIAM.

L.D. and Nila McMullan appeal the district court's[1] order

---

[1]The Honorable Harry F. Barnes, United States District Judge for the Western District of Arkansas.

affirming the bankruptcy court's[2] judgment in favor of the National Bank of Commerce of El Dorado in this foreclosure action adjudicated as part of their Chapter 11 proceedings. Having carefully reviewed the record, the parties' briefs and the McMullan's motion on to supplement the record we conclude the bankruptcy court's judgment was correct. We decline to issue an extended opinion because the bankruptcy Mill's reasons are well-stated in its thorough opinion. Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest: /s/ Michael E. Gans
CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

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[2]The Honorable James G. Mixon, Chief Judge, United States Bankruptcy Court for the Western District of Arkansas.

APPENDIX C

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

Case Number 94-11228

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

IN RE: L.D. MCMULLAN and NILA MCMULLAN — CASE NO. 94-11228M (CHAPTER 11)

NATIONAL BANK OF COMMERCE OF ELDORADO

VS. AP. NO. 94-1516

L.D. MCMULLAN AND NILA OWENS MCMULLAN

ORDER AMENDING JUDGMENT

On this day comes on for hearing the Motion to Amend Judgment filed by L.D. and Nila McMullan. L.D. and Nila McMullan appear by and through attorneys, Davidson Law Firm, Ltd. National Bank of Commerce of El Dorado appears by and through its attorney, Ivester, Skinner and Camp. From the statement of counsel and other things and matters before the Court, the Court finds:

1. On April 18, 1996 this Court entered a judgment finding that debtor, Nila McMullan was indebted to National Bank of Commerce of El Dorado, ("NBC") in the amount of $639,042.00 and that L.D. McMullan personally was indebted

to NBC in the amount of $29,248.36.

2. The Memorandum Opinion filed on April 18, 1996 in connection with aforementioned judgment finds that the $29,248.36 indebtedness adjudged to be owed by L.D. McMullan to NBC arises from note number 95049 dated December 14, 1988 in the original sum of $150,000.00 executed by L.D. and Nila McMullan and Ed and Eileen Cook.

3. The $639,042.00 indebtedness adjudged to be personally owed by Nila McMullan to NBC also includes the aforementioned promissory note.

4. Since the trial in this adversary proceeding, note number 95049 has been paid in full.

5. Pursuant to F.R.Civ.P. 52(b) and Bankruptcy Rule 7052, the April 18, 1996 Judgment and Memorandum Opinion should be modified to find that L.D. McMullan is not personally indebted to NBC and Nila McMullan is personally indebted to NBC in the amount of $609,794.00.

6. Based upon the foregoing, it is

ORDERED that NBC's claim against Nila McMullan personally is determined to be $609,794.00 but that L.D. McMullan is not personally indebted to NBC.

IT IS FURTHER ORDERED, that all other provisions of this Court's April 18, 1996 Judgment that are not specifically modified herein shall remain in full force and effect.

IT IS FURTHER ORDERED that this Amended

Judgment is with without prejudice to the claim of NBC to a perfected security interest, lien and/or in rem claim against L.D. or Nila McMullan's interest in the office building or the Bobby Slack Oil and Gas Production Lease and oil and gas field equipment.

IT IS SO ORDERED.

/S/ James G. Mixon
HONORABLE JAMES G. MIXON

/S/
DATE

Approved:
DAVIDSON LAW FIRM, LTD.
P.O. Box 1300
Little Rock, AR 72201
(501) 374-9977
By: /s/ Steven L. Gershner
Stephen L. Gershner
Ark. Bar No. 78-059

IVESTER, SKINNER & CAMP
Ivester, Skinner & Camp
111 Center Street, Suite 1200
Little Rock, AR 72201
By : /s/ Charles R. Camp

Charles R. Camp

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

L.D. MCMULLAN and
NILA MCMULLAN APPELLANTS

v. Civil N. 96-1093

NATIONAL BANK OF COMMERCE
OF ELDORADO APPELLEES

MEMORANDUM OPINION

Before the Court is an appeal from the bankruptcy court's memorandum opinion and judgment entered April 18, 1996, and the order amending judgment entered June 10, 1996, in the above-styled adversary proceeding. *See National Bank of Commerce v. McMullan (In re McMullan)*, 196 B. R. 818, 823 (Bankr. W. D. Ark. 1996). The appeal is ripe for consideration.

The Court has reviewed the record de novo and finds that the bankruptcy court's findings are correct and hereby affirms the bankruptcy court in all respects. A separate judgment will be entered consisted with this opinion.

/s/ Harry F. Barnes
Harry F. Barnes
United States District Judge

Date: 10/5/96

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

L.D. MCMULLAN and
NILA MCMULLAN — APPELLANTS

v. Civil N. 96-1093

NATIONAL BANK OF COMMERCE
OF ELDORADO — APPELLEES

JUDGMENT

In accordance with the memorandum opinion filed this same dated in the above styled and numbered case, it is hereby ordered and adjudged that the bankruptcy court's memorandum opinion and judgment entered April 18, 1996, and the order amending judgment entered June 10, 1996, are affirmed.

IT IS SO ORDERED.

/s/ Harry F. Barnes
Harry F. Barnes
United States District Judge
Date: 10/5/96

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

IN RE: L.D. MCMULLAN and NILA MCMULLAN
Debtors.

CASE NO. 94-11228M
(CHAPTER 11)

NATIONAL BANK OF COMMERCE
OF ELDORADO

v. AP. NO. 94-1516

L.D. MCMULLAN AND NILA OWENS MCMULLAN

JUDGMENT

Based upon the findings of fact and conclusions of law a contained in a memorandum opinion of this same date, it is

ORDERED that NBC's claim against Nila McMullan, personal is determined to be $639,042.00 and NBC's claim against L.D. McMullan, personally, is determined to be $29,248.36.

IT IS FURTHER ORDERED that the trustee is directed to liquidate the McMullans' interest in the office building and Bobby Slack oil and gas production lease and oil and gas field equipment. The proceeds of the sale will be

held by the trustee pending a determination of the perfected security interest an lien of NBC.

IT IS SO ORDERED.

/s/ James G. Mixon
JAMES G. MIXON
UNITED STATES
BANKRUPTCY JUDGE

DATE: /s/ 4/18/96

cc: Stephen L. Gershner, Esq.
Post Office Box 1300
Little Rock, AR 72203

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Michael Massey, Esq.
Herman Ivester, Esq.
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U.S. Trustee

Debtors

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

IN RE: L.D. MCMULLAN and NILA MCMULLAN
Debtors.

CASE NO. 94-11228M
(CHAPTER 11)

NATIONAL BANK OF COMMERCE
OF ELDORADO

v. AP. NO. 94-1516

L.D. MCMULLAN AND NILA OWENS MCMULLAN

MEMORANDUM OPINION

On December 20, 1994, L.D. McMullan and Nila McMullan filed voluntary petition for relief under the provisions of Chapter 11 of the United States Bankruptcy Code. On the same day the McMullans removed this foreclosure action pending in state court to this Court pursuant to 28 U.S.C. § 1452 (1994). A trial on the merits of the foreclosure action was held on May 15, 1995, after which the matter was taken under advisement.

The proceeding before the Court is a core proceeding in accordance with 28 U.S.C. § 157(b)(2)(B) (1994), and the

Court has jurisdiction to enter a final judgment in the case. The following shall constitute the Court's findings of fact and conclusions of law as required by Federal Rule of Bankruptcy Procedure 7052.

BACKGROUND

From February 1, 1982, through December 14, 1988, L.D. and Nila McMullan and National Bank of Commerce (NBC) engaged in a series of complex business loan transactions. NBC made several loans to the McMullans that were secured by real estate located in Union County, Arkansas; oil leases located in Louisiana; and various types of oil field equipment also located in Louisiana.

In connection with the loans to the McMullans, NBC currently holds four, promissory notes consisting of the following:

(1) Note numbered 87761 dated May 7 1986, in the original principal sum of $233,400.00, executed by L.D. and Nila McMullan,

(2) Note numbered 87762 dated May 7, 1986, in the original principal sum of $206,550.00, executed by L.D. and Nila McMullan,

(3) Note numbered 89334 dated December 17, 1986, in the original principal sum of $27,484.64, executed by L.D. and Nila McMullan, and

(4) Note numbered 95049 dated December 14, 1988, in the original principal sum of $150,000.00, executed by L.D. and Nila McMullan and Ed and Ailene Cook.

The McMullans' liability on these four notes evolved from transactions with the bank that began in early 1982 when NBC loaned the McMullans $200,000.00 to purchase a one-thirteenth working interest in the "Manorado oil properties" located in Sabine, Winn, and Red River Parishes, Louisiana. In early 1986 the price of oil had decreased and operating expenses of the oil fields had increased. The McMullans were unable to make the payments due on the notes, and NBC became concerned. The bank agreed to extend the due dates of the note payments if the McMullans would convey additional collateral to the bank. The McMullans agreed and conveyed a mortgage on the their interest in oil production in Sabine and Union Parishes and a mortgage in the McMullans' one-half interest in an El Dorado office building.

On May 7, 1986, NBC loaned the McMullans an additional $206,550.00 to pay off an indebtedness related to leases in a different oil field serviced by the McBead Drilling Company. The May 7, 1986, note described the collateral securing the $206,550.00 note as including, "Real Estate Mortgage * Oil Prod. Mtg. dated 9-12-84 & 5-7-86." Pl.'s Ex. 29. The referenced mortgages refer to the McMullin's interest in oil and gas leases, leasehold equipment, and oil production in Webster Parish, Louisiana, known as the Bobby Slack properties, and in an office building located in El Dorado, Arkansas.

On May 7, 1986, the McMullans executed a note in

favor of NBC in the principal sum of $233,400.00. This note was secured by a mortgage on the McMullans' interest in oil production in Sabine and Union Parishes and in the McMullans' one-half interest in the El Dorado office building. The May 7, 1986, mortgages were recorded on May 12, 1986. In December 1986, NBC loaned the McMullans an additional $27,484.64 evidenced by note numbered 89334 to make the payments due on the two existing oil field-related notes.

L.D. McMullan testified that in June 1987 he informed James Cook, president of NBC, that the McMullans were reluctantly contemplating bankruptcy. L.D. McMullan recalled that Cook stated, "Well, [Nila McMullan does not] need to file bankruptcy. The bank would never take any action against her." Record at 244. Following that discussion, on June 17, 1987, L.D. McMullan filed an individual voluntary petition for relief under the provision of Chapter 7 of the United States Bankruptcy Code.

The Chapter 7 schedules listed NBC as a creditor holding three claims of $232,270.00, $27,000.00, and $225,500.00. The claims were characterized as partially secured to the extent of $125,000.00. The security was identified on the schedules as "oil prod, Maney, LA," "oil prod. Sarepta, LA; also includes 50% interest from 1971 in office building." L.D. McMullan was granted a discharge in the Chapter 7 proceeding on September 8, 1988, and the case was closed on March 25, 1992.

In December 1988, L.D. McMullan approached James

Cook to secure an additional loan from NBC to improve the office building jointly owned by L.D. and Nila McMullan and Ed and Ailene Cook. After negotiations, which will be discussed below in more detail, Cook, on behalf of NBC, agreed to make the loan. On December 14, 1988, L.D. and Nila McMullan and Ed and Ailene Cook executed note numbered 95049 in the principal sum of $150,000.00, which was secured by a mortgage on the office building. The mortgage was executed by L.D. and Nila McMullan and Ed and Ailene Cook and recorded on December 16, 1988.

On October 12, 1989, the Court entered an order in L.D. McMullan's Chapter 7 proceeding granting NBC's motion to abandon property from the estate. The order, which was prepared by counsel for NBC, stated:

> The debtor, L.D. McMullan, is indebted to NBC in the amount of $453,877.54 as of September 13, 1989. The debt is secured by a Mortgage on oil properties in Sabine and Winn Parishes, Louisiana, which Mortgage was duly recorded on February 17, 1983, bearing Registration No. 265644 in Sabine Parish, Louisiana. Additionally, the debt to NBC is secured by a Mortgage dated May 7, 1986, recorded on May 12, 1986, in Book 1648 at Pages 598 and 604 in the records of Union County, Arkansas, which Mortgage covers Lots 43, 45, 47 and 49

of Block 5 in the North Washington Addition to the City of El Dorado, Union County, Arkansas, and by a Mortgage on certain oil and gas leases in Webster Parish, Louisiana, which was filed in Webster Parish on September 17, 1984, No. 318241.

The debtor has an undivided one-half interest in the real estate located in Union County, Arkansas, as described in Mortgage recorded in Book 1648, Page 598 and Page 604 and has an undivided working interest in the oil leases in Sabine Parish, Louisiana, and of .1833335 in the Webster Parish leases. The security for the loans made by NBC to the debtor is now of substantially less value than the balance owed to NBC. The debtor has no equity in the property. The property should be abandoned by the trustee in this case as having no value to the estate.

Pl.'s Ex. 47.

On November 13, 1992, thirty-six months after NBC obtained the order of abandonment in the bankruptcy proceeding, it filed a petition in the chancery court of Union County, Arkansas, to foreclose its security interests and mortgage liens allegedly existing in personal and real

property located in Louisiana and Arkansas.[1] NBC sought to foreclose L.D. McMullan's interest in the collateral, but did not seek a personal judgment against him because of the Chapter 7 discharge. NBC also sought to foreclose Nila McMullan's interest in the collateral and aid seek a personal judgment against her in the amount of $565,411.75, plus attorney's fees. The foreclosure action was removed to this Court on December 20, 1994, and trial on the merits was held on May 15, 1995.

In order to be entitled to a judgment, NBC must prove that the debt has matured and is unpaid. Rawhide Farms, Inc. v. Darby 267 Ark. 776, 780, 589 S.W.2d 210, 212 (Ct. App. 1979). NBC has established the amounts due on the notes as follows:

Note 87761	
Nila McMullan	$298,853.36
In Rem	232,270.00
Note 87762	
Nila McMullan	$264,663.01
In Rem	205,550.00
Note 89334	

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[1]The defendants apparently did not raise by responsive pleading in the chancery court the jurisdictional issues related to the power of the chancery court of Union County, Arkansas, to foreclose liens and security interests in real and personal property located in the state of Louisiana. See 59 C.J.S. Mortgages § 615 (1949)

Nila McMullan	$ 46,277.27
In Rem	27,484.64
Note 95049	
L.D. and Nila McMullan	$ 29,248.36

NBC has also established that all the notes are in default as to note payments and therefore matured under a standard acceleration clause, with the exception of note numbered 95049.

Although note numbered 95049 is not in default as to note payments, it may also be accelerated because all of the note contain a clause that makes a default on any obligation to NBC a default of each note. This clause provides, in substance, that if the McMullans default on any obligation required by the notes or mortgages, NBC may accelerate the due date of all payments due under all notes and demand immediate payment in full. The validity of an acceleration clause has been upheld. Mitchell v. Federal Land Bank of St. Louis, 206 Ark. 253, 261, 174 S.W.2d 671, 676 (1943). The notes are to be read together with the mortgages, and NBC is entitled to accelerate the payments due under all the notes, including note numbered 95049. Rawhide Farms, Inc. v. Darby, 267 Ark. 776, 780, 589 S.W.2d 210, 212 (Ct. App. 1979). Therefore, NBC has established a prima facie case for judgment for foreclosure on all the notes.

Defenses

The McMullans raise five defenses in opposition to

NBC's allegations. First, the McMullans argue that the parties reached an accord and satisfaction in regard to the debt owed to NBC, thereby extinguishing their liability to the bank. Second, the McMullans assert that they did not sign all the documents involved in the transactions. Specifically, Nila McMullan asserts that she did not execute note numbered 87761 and 87762, nor the May 7, 1986, mortgages on the office building. L.D. McMullan also asserts that he did not execute the May 7, 1986, mortgage on the office building. Third, the McMullans contend that the "other indebtedness" clauses contained in mortgages they previously conveyed to NBC do not grant NBC a mortgage in the El Dorado office building to secure notes numbered 87761, 87762 and 89334. Fourth, Nila McMullan argues that she has been discharged from personal liability because NBC made a disposition of certain collateral consisting of personal property without notice to her as required by Ark. Code Ann. § 4-9-504 (Michie 1991). Fifth, Nila McMullan argues that requiring her to execute the notes and mortgages (with the exception of the December 1988 note and mortgage for $150,000.00) violated the Equal Credit Opportunity Act, 15 U.S.C. § 1691 (1994), because she had no ownership interest in any of the oil leases or personal property and the loan proceeds were disbursed solely to her husband. Each of the McMullans, defenses will be discussed separately below.

Accord and Satisfaction

The McMullans have the burden of establishing the

affirmative defense of accord and satisfaction. Fed. R. Bankr. P. 7008(a) (incorporating by reference Fed. R. Civ. P. 8(c)). They must prove that the parties reached an accord and that full satisfaction of the accord occurred.

An accord is reached when one party agrees to pay and the other party agrees to receive "a different consideration or a sum less than the amount to which the latter is or considers himself entitled." Dyke Indus., Inc. v. Waldrop, 16 Ark. App. 125, 127, 697 S.W.2d 9361 937 (1985) (citing Jewell v. General Air Conditioning Corp., 226 Ark. 304, 308, 289 S.W.2d 881, 883 (1956)). Stated differently, the parties must have an understanding that the payment of the smaller sum will discharge the whole debt. Fort Smith Serv. Fin. v. Parrish, 302 Ark. 299, 304, 789 S.W.2d 723, 725 (1990) (citing Jewell, 226 Ark. at 308, 289 S.W.2d at 883).

For satisfaction to exist nothing short of actual performance meaning thereby performance accepted will suffice. . . . Accord and part performance do not constitute satisfaction. It is merely executory so long as to its terms something remains." General Air Conditioning Corp. v. Fullerton, 227 Ark. 278, 2821 298 S.W.2d 61, 64 (1957) (quoting Lyle v. Federal Union Ins. Co., 206 Ark 1123, 1129, 178 S.W.2d 651, 654 (1944)). Thus, part performance is not satisfaction, regardless of whether the failure to perform is the fault of either party. North State Fire Ins. Co. v. Dillard, 88 Ark. 473, 476, 115 S.W. 154, 155 (1908). The McMullans argue that two separate accord and satisfactions occurred,

either of which absolve them of further liability to NBC. The first concerns the December 1988 loan transaction in the sum of $150,000.00, and the second concerns December 1989 transaction in connection with the oil and gas leases in Louisiana. Each will be discussed separately below.

A. December 1988 Transaction

The McMullans argue that an accord and satisfaction occurred in connection with the December 1988 loan transaction in the sum of $150,000.00. James Cook stated that Ed Cook and L.D. McMullan approached him about borrowing $50,000.00 for renovation of the office building and $50,000.00 for Ed Cook's personal use. James Cook testified:

> In fact, Mr. McMullan had taken bankruptcy and these loans were on a nonaccrual . . . . The monthly oil checks were continuing to be coming to the bank and were being credited to his note . . . . He came in and talked to us about what we could do as far as keeping the bank from taking possession of the real estate and the oil production. We at that time, and the committee agreed, that if Mr. McMullan would make a $50,000 payment, advance of which money was borrowed by Cook and McMullan on the office building that we would agree to accept the oil payments, whatever the oil production was, for the

> property that was mortgaged to the bank until such time as Mr. McMullan got his indebtedness paid off at Exchange Bank. And he indicated that at that time we could combine the two oil incomes and set the note up on a long term payout to pay off the balance of his indebtedness.

Record at 50.

L.D. McMullan testified that before he approached James Cook he told Ed Cook, "Well, I've lost the building on account of the bankruptcy and I'm going to have to talk to him [James Cook] to see what I can do about that." Record at 246.

Mullan further stated:

> [We] need[ed] fifty thousand dollars ($50,000) to do the renovation on the part of the building American General leased so I went to the bank and asked James if Ed and I got the Fifty Thousand Dollars ($50,000) extra and I gave the bank my money, could I redeem the building from the bankruptcy and he said, "No, we can't do it for $25,000." I said, "I wasn't talking about let's get $50,000 between us. I said getting $50,000 each." And he said, "Ok, we might can do that." . . . Three or four days later he called me and said, "We can do that."

Record at 246-47.

On December 14, 1988, the bank loaned $150,000.00 to L.D. and Nila McMullan and Ed and Ailene Cook, and, as agreed, $50,000.00 of the loan proceeds were applied to L.D. McMullan's discharged obligation and Nila McMullan's existing obligation under note numbered 87761.[2] The McMullans executed the December 16, 1988, mortgage in the office building in an attempt to secure the $150,000.00 loan. The McMullans argue that the only "rational explanation" of the $150,000.00 loan transaction is that "[a]n accord and satisfaction occurred. NBC agreed to release its lien [from mortgages] on the office building in exchange for a new note which subjected the McMullans to personal liability." Defs.' Reply Br. at 13-14.

However, the evidence here falls considerably short of establishing an accord and satisfaction. None of the witnesses specifically testified that the parties had an understanding that the lesser sum of $50,000.00 borrowed from and then paid to the' bank would discharge the McMullans' total indebtedness. James Cook directly denied that any such agreement was reached, and Nila McMullan testified that she never discussed an accord and satisfaction agreement with anyone. L.D. McMullan offered an opinion that after securing the

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[2]L.D. McMullan's personal liability to NBC had previously been discharged in his Chapter 7 proceeding. Whether NBC's demand for a payment on L.D. McMullan's discharged debt violated the discharge injunction provided in 11 U.S.C. § 524(a)(2) (1994) is not an issue before the Court.

$150,000.00 loan and paying $50,000.00 on his discharged debt to NBC he "thought everything was taken care of," but he gave no unequivocal testimony evidencing an agreement between the parties.

The evidence does not support the McMullans' assertion that an accord and satisfaction is the only "rational" inference to be drawn from events that occurred. The more reasonable conclusion is that NBC agreed to forbear instituting foreclosure proceedings in exchange for a $50,000.00 payment on a partially discharged debt and continued collection of proceeds from the sale of the oil production. Therefore, the McMullans failed to meet their burden of proof to establish the affirmative defense of accord and satisfaction as to the December 1988 transaction.

B. December 1989 Transaction

The McMullans argue that a second accord and satisfaction occurred in December 1989 in connection with the oil and gas leases in Louisiana. Counsel for the McMullans contends in his brief that the "McMullans further claim that in 1989 they executed and delivered quitclaim deeds to NBC of their interest in the 'Manorado and Bobby Slack' oil and gas properties in Louisiana . . . in full satisfaction of any claims NBC had against either L.D. McMullan and/or Nila McMullan." Defs.' Reply Br. at 3.

L.D. McMullan testified that in December 1989 Henry Kinslow, his attorney, advised him that NBC had "agreed to do the balance in lieu of foreclosure." Record at 253. To

accomplish that purpose, Kinslow requested L.D. McMullan to pick up three quitclaim deeds from his office and execute them. L.D. McMullan stated that he acquired the deeds, took them to his office in the Union County office building, executed the deeds, and had them witnessed by two of his employees, Kem Lane and Debbie Williams. He then delivered the deeds to James Cook, who was in the office building visiting Ed Cook on an unrelated matter.

The three quitclaim deeds, on their faces, described oil Sabine, Winn, and Red River Parishes, Louisiana, the same property identified by various witnesses as the Manorado oil leases.[3] On direct examination, L.D. McMullan testified that the quitclaim-deeds were for both the Manorado and the Bobby Slack properties. On cross-examination, he testified that he still owned the Bobby Slack oil leases in 1992. On redirect examination, L.D. McMullan contradicted himself again, recalling that the Bobby Slack property was the only property he deeded back to NBC.

Other evidence in the record points out discrepancies in L. D. McMullan's testimony with regard to ownership of the Louisiana oil and gas properties. The McMullans' schedules in this proceeding reflect that only the Manorado properties were conveyed to NBC by quitclaim deed in 1989. But L.D. and Nila McMullan's tax returns for 1989, 1990,

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[3]However, attached to the Red River Parish quitclaim deed is a separate document bearing a typewritten description of the Bobby Slack property located in Webster Parish.

1991, and 1992 indicate that they still owned the Manorado oil properties. L.D. McMullan also stated that NBC lost the original Bobby Slack lease and that a new lease was executed in favor of himself and NBC equally. Further, he said he "reacquired" the Bobby Slack property in December 1990, although his 1990 tax return claimed income and expenses for the entire year of 1990.

The bank's evidence regarding the quitclaim deeds is also confusing. Carol Crafton Anthony, one of NBC's attorneys in 1989, testified by way of deposition.[4] She acknowledged writing a letter dated December 12, 1989, to Henry Kinslow, attorney for the McMullans. In the letter, she stated that she enclosed "deeds in lieu of foreclosure" to the oil and gas interest in Louisiana. Also testifying by deposition, Kinslow recalled receiving the deeds from Anthony and transferring them to L.D. and Nila McMullan. Kinslow testified that the McMullans told him NBC would not pursue Nila McMullan on the "oil debts; [because] that was L.D.'s problem." Record at 125.

James Cook testified that he did not become aware of the existence of the quitclaim deeds until a year ago when preparing for trial and that he never agreed to accept the quitclaim deeds as satisfaction of NBC's claims. Cook explained that the bank never accepted the quitclaim deeds

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[4]Carol Crafton Anthony is now a circuit judge in Union County, Arkansas.

because:

> [W]e took the position that McMullan was going to do what he said he was going to do. He wanted to continue to try to work out the loan, and there was no need of us taking the property; it belonged to Mr. McMullan. Mr. McMullan had assured us that he was going to do everything he could to work out the loan. It was his collateral; as far as I know, he's still taking tax advantage of it.

Record at 107-09.

Despite Cook's purported lack of knowledge of the deeds, NBC's internal bank records do refer to the documents. A loan review document dated May 14, 1991, commented: "The loan files contain quitclaim deeds executed 12/20/89 by Mr. and Mrs. McMullan conveying ownership of the oil production. . . . to NBC as a result of relief and abandonment through the bankruptcy court. . . ." Defs.' Ex. 10.

Another loan review report dated July 10, 1992, contains the following analysis of McMullan's financial standing with the bank:

> The $110,000 value he places on his oil production share of ownership is questionable based on oil checks and debt reduction with NBC and the deeding of oil productions to the Bank . . . . As a result of the chapter 7 bankruptcy the indicated oil properties were

> abandoned to and deeded to the bank. The deeds have not been recorded as a matter of record, and management states this is due to environmental risks exposure.

Defs.' Ex. 11. In addition, NBC generated an internal report of other real estate owned by the bank as of July 31, 1992 it indicated NBC owned the oil property described in the quitclaim deeds.

Thus, the evidence does not establish a clear picture of the transactions in question. The quitclaim deeds create uncertainty as to whether they describe both the Manorado and Bobby Slack property. Neither party introduced documentation of the alleged new lease of the Bobby Slack property or of a mortgage of the new lease in favor of NBC securing any debt. Moreover, NBC's own records contradict James Cook's unconvincing testimony that he was unaware of the existence of the quitclaim deeds until recently.

Significantly, the quitclaim deeds purporting to convey NBC title to the oil and gas properties are not acknowledged and have never been recorded; therefore, the purported transfers were not perfected. La. Civ. Code Ann. art. 1839 (west 1987) and La. Rev. Stat. Ann. § 9:2743 (West 1991). In addition, both NBC and the McMullans continued to conduct their respective businesses as if no transfer had occurred.

The evidence does suggest that the parties were attempting to effect a voluntary transfer of the oil leases to

NBC rather than a transfer of title by a foreclosure action. However, accepting a transfer of collateral in lieu of foreclosure does not extinguish the underlying debt, in the absence of an agreement for an accord and satisfaction to that effect. Even if an agreement had been reached, the attempted conveyance was not fully performed because the deeds were neither acknowledged nor recorded; therefore, the attempted conveyance could not constitute the full performance element necessary to an accord and satisfaction. State Farm v. Dillard, 88 Ark. 473, 476, 115 S.W. 154, 155 (1908) (holding that an agreement not performed or evidenced by a writing is not a bar to an action on the original debt).

Therefore, the McMullans failed to meet their burden of proof to establish the affirmative defense of accord and satisfaction as to the December 1989 transaction.

Forged Instruments

The McMullans also allege that some of the relevant instruments involved in the loan transactions with NBC were forged or altered. L.D. McMullan testified that both his and his wife's signatures were forged on a May 7, 1986, mortgage on the office building. He testified that he remembered signing the note referred to by the mortgage, but was certain that neither he nor his wife signed the mortgage.

Nila McMullan testified that she signed neither the note to NBC dated May 1 7, 1986, for $233,400.00, nor the note to NBC dated May 7, 1986, for $206,550.00. She acknowledged, however, that she signed copies of both notes.

She also testified that she did not sign the May 7, 1986, mortgages on the office building nor the attachment to one of the mortgages styled "continuation of mortgage." The McMullans offered no other evidence regarding the alleged forgeries, and they do not dispute the fact that the loan proceeds were paid for their benefit as directed by them.

NBC hired a handwriting expert to examine the documents in question. The witness concluded that the alleged forgeries were, in fact, the McMullans, genuine signatures. Moreover, upon examination of the alleged forgeries at trial, the Court could discern no difference between the handwriting styles on the questioned documents and on other documents known to bear the McMullans' signatures, including their signatures on the bankruptcy petition.

Furthermore, when L.D. McMullan filed his 1987 Chapter 7 petition, he listed as undisputed claims evidenced by the notes and mortgages he now asserts are forgeries. L.D. and Nila McMullan's testimonies on this issue are prevarications. The Court finds that all signatures on the instruments in question are genuine.

Validity of the Other Indebtedness Clause

The record reflects that the McMullans executed four mortgages of their undivided one-half interest in the Union

County, Arkansas, office building.[5] NBC contends that the office building acts as security for notes 87761, 87762, and 89334 pursuant to several mortgages, including the 1982, 1986, and 1988 mortgages, because of the future advance or other indebtedness clauses in the documents. The McMullans argue that the clauses do not grant a mortgage in the office building to secure the debts evidenced by notes 87761, 87762, and 89334 because the debts are not the same kind or class of debt as that related to the office building.[6]

The mortgage dated June 11 1982, contains the following language:

> This conveyance secures all future advancements of every kind and character which [NBC] shall hereafter make to Mortgagor . . . for whatever purpose said advances are made or used irrespective of whether they are of the same class as the

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[5]These mortgages were recorded on June 1, 1982 (Pl.'s Ex. 40), May 12, 1986 (Pl.'s Ex. 25), May 12, 1986 (Pl.'s Ex. 31) and December 16, 1988 (P1.'s Ex. 43).

[6]The McMullans also argue that the 1982 and 1988 mortgages on the Union County, Arkansas, office building were conveyed to NBC jointly by the McMullans and their partners to secure loans connected with the office building and, therefore, the mortgages secure other loans only if made jointly to all mortgagors. Even if the McMullans' argument has merit, the two 1986 mortgages clearly establish the office building as collateral for antecedent and future dates incurred solely by the McMullans.

initial indebtedness described herein.

Pl.'s Ex. 40.

The two mortgages dated May 19, 1986,[7] and the mortgage dated December 16, 1988, contain the following identical clause:

> This mortgage is also given for the further purpose of securing the payment of any and all sums . . . of any and every kind now or hereinafter owning [sic] and to become due from the mortgagor to Bank . . . during the term of this mortgage, howsoever created, incurred, . . . and any and all future advances, notes, indebtedness, advances, or obligation of any type or nature by mortgagors to the Bank . . . whether of the same nature or type as those for which the debts herein described were created.

Pl.'s Exs. 25, 31, 43.

Parties to a loan transaction may agree that a mortgage given to secure a particular debt may also secure some other existing or future debt. In re Dorsey Elec. Supply Co., 344 F. Supp. 1171, 1172 (E.D. Ark. 1972); In re Ferguson, 85 B.R. 89, 91 (Bankr. W.D. Ark. 1988) (citing In re Dorsey, 344 F.

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[7]The McMullans argument that the 1986 mortgages on the office building do not secure future advances because they were forged is rejected here because of the previous finding that the 1986 mortgages were not forged.

Supp. at 1172 and Hendrickson v. Farmers Bank Trust Co., 189 Ark. 423, 433-34, 73 S.W.2d 725, 729 (1934)). A mortgage lien does not extend to other debts unless the subsequently acquired debts are of the same class as that of the primary debt or so related to the same class that the assent of the mortgagor may be inferred, unless the parties agree otherwise. In re Ferguson, 85 B.R. at 91; Hendrickson, 189 Ark. at 433, 73 S.W.2d at 729.

Chief Judge George Craycraft stated the reason for the rule in the case of Union Nat'l Bank v. First State Bank & Trust Co., 16 Ark. App. 116, 697 S.W.2d 940 (1985). He explained that "the purpose of such a [rule] is to prevent the extension of a lien by the use of general terms to debts the debtor did not contemplate. 16 Ark. App. at 119, 697 S.W.2d at 941-42 (citing Bank of Searcy v. Kroh, 195 Ark. 785, 789, 114 S.W.2d 26, 28 (1938)); Security Bank v. First Nat'l Bank, 263 Ark. 525, 532, 565 S.W.2d 623, 627 (1978); Hendrickson, 189 Ark. at 433, 73 S.W.2d at 729. However, the court held in Union National Bank that the first mortgage lien did extend to all subsequent advances whether related or unrelated to the primary purpose because the future advance clause unambiguously stated that it would do so.

In the instant case, the 1982 mortgage clearly expresses the intent that it will secure all future advancements of every kind, even if the future indebtedness is not of the same class as the original indebtedness.

The 1986 mortgages unambiguously state the intent of

the parties in language virtually indistinguishable from that of the clause sanctioned by Judge Craycraft in Union National Bank. Each other indebtedness clause asserts that the mortgage secures debts "of any and all kind now or hereinafter [owing]". P1.'s Ex. 31, 43. The obvious intent of the identical clauses is to extend the mortgage lien as security for obligations of the same as well as different classes, including both existing and future indebtedness. Courts have upheld this type of language as valid and enforceable. Union National Bank, 16 Ark. App. at 120, 697 S.W.2d at 942 (holding that where the intention of the parties is expressed in unambiguous terms, the court does not construe this clause but enforces it as written).

The 1988 mortgage, as to Nila McMullan's interest in the office building also extends to the office building. However, the 1988 mortgage, as to L.D. McMullan's interest in the office building, cannot be relied on by the parties for a different reason. The office building was listed on L.D. McMullan's Chapter 7 petition filed June 17, 1987, and became property of the Chapter 7 estate. 11 U.S.C. § 541(a) (1994) The order of abandonment was not entered until October 1989, therefore, the office building was still property of the estate at the time the December 16, 1988, mortgage was executed by L.D. McMullan and filed of record. 11 U.S.C. § 544(a) (c) (1994). At that time, L.D. McMullan had no interest in the office building to convey. Only the trustee, as representative of the estate, had the power to convey property

of the estate, and, in this case, the trustee was not so authorized without court approval. 11 U.S.C. §§ 323 & 363(h)(1) (1994). In addition, the taking of the lien in property of the estate would be an act against property of the estate prohibited by 11 U.S.C. § 362(a)(4)-(5) (1994). Whether such act is void or voidable is uncertain.[8]

For the foregoing reasons, the 1982 more extends to future loans made by NBC to the McMullans, the 1986 mortgages secure the McMullans' antecedent and subsequent

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[8]There is a split of authority among the circuit courts of appeals on the issue of whether an act in violation of the automatic stay should be characterized as "void ab initio" or merely "voidable." The majority holds that such acts are void. Schwartz v. United States (In re Schwartz) 954 F.2d 569 (9th Cir. 1992); Job v. Calder (In re Calder), 907 F.2d 953 (10th Cir. 1990); Smith v. First Am. Bank (In re Smith), 876 F.2d 524 (6th Cir. 1989); In re Ward, 837 F.2d 124 (3rd Cir. 1988); 48th St. Steakhouse, Inc. v. Rockefeller Group, Inc. (In re 48th St. Steakhouse, Inc.), 835 F.2d 427 (2d Cir. 1987), cert. denied, 4 85 U.S. 1035 (1988); Matthews v. Rosene (In re Matthews), 739 F.2d 249 (7th Cir. 1984); Borg-Warner Acceptance Corp. v. Hall, 685 F.2d 1306 (11th Cir. 1982); In re Smith Corset Shops Inc., 696 F.2d 971 (1st Cir. 1982). However, every majority circuit has recognized the possibility of retroactively validating acts in violation of the stay in limited circumstances. E.g. Easley v. Pettibone Michigan Corp., 990 F.2d 905 (6th Cir. 1993). The minority view is that an act in violation of the stay is merely voidable. Jones v. Garcia (In re Jones), 63 F.3d 411 (5th Cir. 1995); Bronson v. United States, 46 F.3d 1573 (Fed. Cir. 1995). The Eighth Circuit has not directly addressed this issue.

debt to NBC, and the 1988 mortgage as to Nila McMullan secures Nila McMullan's antecedent and subsequent debt to NBC.

Alleged Disposition of Collateral

Nila McMullan asserts that she has been discharged from

personal liability on note 7762 for 6,550.00 because NBC made a disposition of certain collateral without notice to her. The McMullans state that NBC held a mortgage lien in an oil and gas lease of the Bobby Slack property in Webster Parish, Louisiana, and a security interest in the oil field equipment used to operate the lease. L.D. McMullan testified that after his Chapter 7 discharge was granted and the existing Bobby Slack lease terminated, he and NBC entered into a new lease of the Bobby Slack properties with each owning a fifty percent interest.

The McMullans argue that the execution of this new lease constituted a disposition of the personal property used in connection with the operation of the lease and that the alleged disposition occurred without notice to Nila McMullan as required by Ark. Code Ann. 9 4-9-504 (Michie 1991). They contend that failure to give Nila McMullan the required notice results in a discharge of her liability to NBC on note 87762 for $206,550.00.

After a default, a secured party has a right to repossess and dispose of its collateral. Ark. Code Ann. § 10-9-504(1) (Michie 1991). The disposition may be made at public or

private sale and reason notification of the time and place or "any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor." Ark. Code Ann. § 10-9-504(3) (Michie 1991). If this section is not complied with, the creditor is not entitled to a deficiency judgment unless the secured party proves that the reasonable value of the collateral was less than the debt. Marks v. Powell, 162 B.R. 820, 829 (E.D. Ark. 1993) (citing Henry v. Trickey, 9 Ark. App. 47, 48, 653 S.W.2d 138, 139-40 (1983)). See also Bank of Bearden v. Simpson, 305 Ark. 326, 331, 808 S.W.2d 341, 344 (1991) (holding creditor who sold personalty in violation of the Code could pursue the remainder of the debt by foreclosing against real property which also served as collateral, but deficiency would not exceed the difference between the reasonable value of the personalty at the time of sale and amount of obligation at the time of sale of personalty occurred).

The documents underlying the conveyance of the oil and gas field equipment are found in Pl.'s Ex. 2, p. 7; Pl.'s Ex. 9, p. 78; Pl.'s Ex. 10, p. 7-8; Pl.'s Ex. 11, p. 7; Pl.'s Ex. 12, p. 6. These exhibits purport to convey oil and gas working interests and personal property used in the oil and gas operation and are the same documents the debtors argue create no ownership interest in Nila McMullan. Witnesses identified the "Bobby Slack" oil lease as being in Webster Parish, Louisiana, where presumably the oil and gas

equipment was also located. The instrument conveying the Bobby Slack oil lease and attendant oil and gas field equipment is not in the record. Not only is there no evidence of the extent of Nila McMullan's ownership in the Bobby Slack operation, there is no credible evidence that NBC disposed of any property or used any of her property in any manner without her consent. Zuppas v. General Elec. Credit Corp., Nos. 86-1148, 86-1157, 1987 WL 36919, at *2 (4th Cir. Mar. 27, 1987) (stating that language of § 9-504 focuses on sales, leases, and other exchanges of collateral for cash or accounts); General Elec. Capital Corp. v. Vashi, 480 N.W.2d 880 (Iowa 1992) (stating that § 9-504(1) (2) suggests an actual transfer of an interest in the collateral by sale, lease, or contract). The fact that her husband and NBC apparently used the equipment in a cooperative venture is consistent with use of the property with her express or implied consent. She never testified otherwise.

The only testimony concerning the issue by the plaintiff was the testimony of L.D. McMullan as follows:

Q: And the Bobby Slack property was the only property that you deeded back to the bank. Is that also correct?

A: Yes, sir.

Q: After you and Mrs. McMullan deeded the Bobby Slack property back to the bank, what happened to that oil gas lease?

A: They lost it.

Q: The bank lost the lease?

A: They lost the lease.

Q Now, as I understand from previous testimony, there, was a new lease of the Bobby Slack property. Is that correct?

A: Yes, sir.

Q: And who were the participants in the new lease of the Bobby Slack property?

A: Myself and National Bank of Commerce.

Q: How much was your interest in the new Bobby Slack lease?

A: Fifty percent (50%).

Q: How much was the bank's interest in the new Bobby Slack lease?

A: Fifty percent (50%) .

Q: What equipment is being used to operate that new lease that you and the bank are operating?

A: That equipment that was on the wells.

Q: The same equipment?

A: Yes, sir.

Q: So, in essence, someone new is using that equipment to operate those leases?

A: Yes sir,

Q: You and the bank and - now, did you or the bank ever send Nila McMullan notice that the bank was going to start using that equipment for it's [sic] own purposes?

A: No, sir.

Record 310-11.

Q: Mr. McMullan, do you have any personal knowledge

not obtained through conversations with anyone else, but actual knowledge personally obtained by seeing or observing that the bank - National Bank of Commerce was in possession of any personal property that came from the Manorado or Bobby Slack oil properties?

A: I saw the gas compressors and the pull machine, things like that.

Q: Where did you see this?

A: Down in Many, Louisiana.

Q: Did you - but, I'm asking did you see them in the possession of any - an agent or any employee or other person associated with National Bank of Commerce?

A: Well, James Cook was the Chairman of the Board of Manorado and I think he was Chairman of the Board of the bank. Is that the same thing?

The Court: Well, he's asking did you see the bank as an entity in possession of any of the property by an agent acting on behalf of the bank. That's what he's asking. Have you or have you not?

A: If you call him an agent of the bank, I would say that I probably did.

Q: Where did you see Mr. Cook in possession of this property you just described - Mr. James Cook? Where did you see this?

A: He was Chairman of the Board of Manorado.

Q: But where did you see him in his capacity --

A: You mean, carrying it off by hand or something?

Q: Yeah.

A: No, sir. I hadn't seen him carry it off by hand.

Q: Did you ever see it in his physical custody?

A: If you mean personally got a hold of it or by virtue of him being the chairman of the company would have been in control of it. Which one?

Q: In his capacity as an officer of the National Bank of Commerce?

A: He would have had control of it.

Q: He would have had control of it in his capacity as an officer of National Bank of Commerce. Is that your testimony?

A: An officer of Manora

Q: No, I'm not asking as An officer of Manorado. I'm asking --

The Court: Let's go on to something else. He's not going to answer your question.

Q: Mr. McMullan, you don't have any personal knowledge that the National Bank of Commerce ever took possession and sold any of the property -- personal property related to the Bobby Slack or Manorado properties, do you?

A: No, not me, personally.

Record 307-309.

The McMullans have failed to establish any violation

of Ark. Code Ann. § 4-9-504 (Michie 1991).[9]

Violation of ECOA

The McMullans contend that because the loan proceeds of notes 87761, 87762, and 89334 were used for L.D. McMullan's business and Nila McMullan had no ownership interest in the collateral, NBC violated the Equal Credit Opportunity Act, 15 U.S.C. § 1691 (1994), by requiring her to execute the notes. The evidence, however, directly contradicts the McMullans' argument.

Section 1691 prohibits a lender from requiring a spouse to join in the loan of another spouse unless the latter does not meet credit requirements. 15 U.S.C. § 1691 (1994). The law also provides:

> A request for the signature of both parties to a marriage for the purpose of creating a valid

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[9]The McMullans' brief is unclear as to whether they are also arguing that the bank disposed of the Manorado oil and gas equipment used in connection with the Manorado lease. The debtors do not distinguish the oil and gas lease interest (real property) from the oil and gas field equipment (personal property) and refer to all of it in unspecific terms such as Manorado, Bobby Slack, Louisiana oil properties, oil and gas properties in Louisiana, and the properties.

The McMullans argue simultaneously that (1) Nila McMullan owned no property interest in the oil and gas leases and equipment; (2) Nila McMullan conveyed her interest in the Manorado "oil and gas properties" to NBC, and (3) she owned An interest that was not mortgaged to NBC and that NBC disposed of her interest without giving her the required notice.

> lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this title.

15 U.S.C. 1691d(a) (1994).

Cases interpreting this provision have permitted lenders to require both spouses' signatures on loan documents in certain circumstances. In Re DiPietro, 135 B.R. 773, 777 (Bankr. E.D. Pa. 1992) (holding that the bank logically required wife's signature on a term note in addition to her husband's signature where, under state law, bank could obtain security in husband's property only by having wife be co-obligor); Resolution Trust Corp. v. Townsend Assocs. Ltd. Partnership, 840 F. Supp. 1127, 1142 (E.D. Mich. 1993) (ruling that creditor's requiring wife's personal guarantee in addition to her husband's, after his default on original loan was not a pretext for discrimination where husband and wife Jointly owned assets listed on financial statement and husband did not separately own sufficient assets to be credit worthy).

No one disputes that L. D. and Nila McMullan were husband and wife and that they were domiciled in Union County, Arkansas, at all relevant times. L.D. McMullan testified that Nila McMullan never owned any interest in the Manorado and Bobby Slack oil and gas leases or the property. At trial, he stated:

> Q: Well, you've heard some testimony that her name appears on certain documents showing that in

particular, the Manorado properties owned by L.D. McMullan and Nila McMullan as husband and wife. What is your response to that?

A: In Louisiana, you put - if a man is married, you put the husband and wife. If he was unmarried, you put An unmarried man. If he's a widow, you put the widow of this certain woman. You have to put the woman's name in Louisiana, but if she's going to have An interest you want to spell out what her interest is for her to have An interest.

Record at 240.

The evidence of the interest the McMullans acquired in the oil and gas leases and personal property was a series of nine documents styled as assignments or sale and assignments. These documents contain a description of the property conveyed and the names of the grantors and grantees. The grantees were listed as follows:

Pl. Ex. 2	L.D. McMullan and Nila McMullan Husband and Wife
Pl. Ex. 3	L. D. An and Nila McMullan Husband and Wife
Pl. Ex. 4	L.D. McMullan, the husband of Nila McMullan
Pl. Ex. 5	L.D. McMullan and Nila McMullan, Husband and Wife
Pl. Ex. 6	L.D. McMullan and Nila McMullan Husband and Wife

Pl. Ex. 9	L.D. and Nila McMullan
Pl. Ex. 10	L.D. and Nila McMullan
Pl. Ex. 11	L.D. and Nila McMullan
Pl. Ex. 12	L.D. and Nila McMullan

The testimony presented concerning the McMullans, interest in the Bobby Slack property was vague and inconclusive. The instrument conveying the Bobby Slack properties to the McMullans was not introduced.

The law governing Nila McMullan's interest in these estates depends on whether the property is real or personal. Oil and gas leases are real property under both Arkansas and Louisiana law. Clark v. Dennis, 172 Ark. 1096, 1097, 291 S.W. 807, 808 (1927) (citing Standard Oil Co. v. Oil Wells Salvage Co., 170 Ark. 729, 738, 281 S.W. 360, 363 (1926)); 9 La. Rev. Stat. Ann. § 31-18 (West 1989); Salvex, Inc. v. Lewis, 546 So. 2d 1309, 1312 (La. Ct App.), writ denied, 551 So. 2d 1323 (La. 1989); Northcott Exploration Co. v. W.R. Grace & Co., 430 So. 2d 1077, 1079 (La. Ct. App. 1983). The oil production equipment is personal property. Both the real and personal property in question are located in Louisiana; however, the McMullans, domicile is in Arkansas. Therefore, Louisiana law defines the estate in real property located in Louisiana, La. Civ. Code. Ann. art. 3524 (West 1992), and the law of the domicile of the owner defines the estate in personal property located in Louisiana. La. Civ. Code Ann. art. 3523 (West 1992).

In Louisiana, a conveyance of real property, such as

the oil and gas leases, to husband and wife, as by An act of sale, create An estate of co-ownership between the spouses. Morrison v. Richards, 343 So. 2d 375, 377 (La. Ct. App.), writ denied 345 So. 2d 503 (La. 1977). Even if real property is acquired in only one spouse's name, the estate is community property except in certain circumstances not present here. La. Civ. Code Ann. art. 2341 (West 1985). Community property consists of "property acquired during the existence of the legal regime through the' effort, skill, or industry of either spouse; property acquired with community things or with community and separate things." La. Civ. Code Ann. art. 2338 (West 1985). In addition, all obligations incurred by a spouse during the existence of a community property regime for the common interest of either or both spouses is a community obligation. La. Civ. Code Ann. art. 2360 (West 1985). A debt incurred by either spouse during the existence of a community property regime is presumed to be a community obligation. La. Civ. Code Ann. art. 2361 (West 1985).

In this case, the McMullans offered no evidence or argument that L.D. McMullan acquired the leases with his separate property. Therefore, the McMullans' oil and gas leases are community property under Louisiana law because these holdings were acquired during the marriage with the community's credit. Specifically, if L.D. McMullan owns An interest in the Manorado and Bobby Slack properties, then Nila McMullan owns An undivided one-half of those leases,

both those assigned to her and her husband and those assigned solely to her husband during the course of their marriage. Further, the McMullans' community is responsible for the debts incurred by either spouse in acquiring the leases. Cabral v. Cabral 543 So. 2d 952 (La. Ct. App. 1989) (holding that husband's unsuccessful real estate venture incurred obligations to the community because wife failed to prove that the community would not have profited if the venture had succeeded), writ denied, 548 So. 2d 328 (La. 1989).

With regard to the personal property, the same conclusion is reached under applicable Arkansas law. A conveyance of personal property to a husband and wife creates a co-tenancy, which is either a tenancy by the entirety or a tenancy in common. Ramsey v. Ramsey, 259 Ark. 16, 19, 531 S.W.2d 28, 30 (1975) (citing Terral v. Terral, 212 Ark. 221, 232, 205 S.W.2d 198, 203 (1947)); Black v. Black, 199 Ark. 609, 614, 135 S.W.2d 837, 840 (1940) (citing Union & Mercantile Trust Co. v. Hudson, 147 Ark. 7, 8, 227 S.W. 1, 3 (1921); Dickson v. Jonesboro Trust Co., 154 Ark 155, 157, 242 S.W. 57, 59 (1922)).

Because Nila McMullan owned a co-interest in all the collateral, real and personal, that L.D. McMullan owned, NBC was justified in requiring her to execute both the notes and mortgages in order to create a valid lien. The Equal Credit Opportunity Act permits such a purpose. 15 U.S.C. 1691d(a)(1994). Therefore, NBC did not violate the Equal Opportunity Credit Act.

The Appropriate Remedy

NBC seeks a personal judgment against Nila McMullan and a judgment foreclosing its lien in the oil and gas leases and related personal property of L.D. and Nila McMullan. As stated herein, NBC has established the amount of its claim against L.D. and Nila McMullan. NBC claims a mortgage on a lease of the Bobby Slack oil production, with NBC and L.D. McMullan each An owner of a fifty percent interest. No such lease or mortgage from L.D. McMullan to NBC appears in the record. Further, as explained earlier, the validity of the 1988 mortgage executed while the office building was property of L.D. McMullan's bankruptcy estate is in serious question.

The appropriate remedy is dictated in a substantial part by the history of the litigation between the McMullans and NBC. NBC filed the foreclosure action on November 13, 1992. On September 23, 1993, the McMullans' counsel filed a motion to withdraw, which was granted. Trial on the merits was set for Monday, January 3, 1994, but was continued at the McMullans, request to February 11, 1994. The case was continued a second time on the McMullans' motion because NBC had failed to produce records in a timely fashion. The trial was re-scheduled for May 27, 1994. On April 15, 1994, the McMullans, without leave of court, filed An extensive counterclaim raising numerous new issues. The case was again re-scheduled for June 23, 1994.

On May 10, 1994, counsel for the McMullans

withdrew from the case. New counsel for the McMullans promptly filed a motion to disqualify counsel for NBC. The McMullans filed another motion for continuance on June 20, 1994. The motion to disqualify counsel for NBC was denied June 27, 1994.

On July 22, 1994, the McMullans filed a motion for summary judgment followed a motion to bifurcate and transfer to circuit court. The matter was still scheduled for trial on the merits on August 19, 1994, when on August 18, the McMullans filed a motion' to dismiss the counterclaim and on the same day, new counsel for Nila McMullan filed on her behalf a voluntary petition for relief under the provisions of Chapter 13. Her schedules reflected assets of $1,370.00 (including her two poodles), unsecured liabilities of $467,434.64, a monthly income of $400.00 per month, and monthly expenses of $4,949.40.

On August 19, 1994, Nila McMullan removed the entire chancer court case to the United States District Court for the Western District of Arkansas.[10] The district court remanded the portion of the case against L.D. McMullan to chancery court where it was re-set for trial on the merits on December 22, 1994. The portion of the case against Nila

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[10]The removal petition should have been filed in the bankruptcy clerk's office, not the district court clerk's office. 28 U.S.C. §§ 157(a), 1334, 1452 (1994), Fed. R. Bankr. P. 9027(a), 9001(3), Local Rules U.S.D.C. Eastern and Western Districts of Ark. F-2II(c).

McMullan was referred to this Court.

Finally, at this Court's suggestion, the Chapter 13 case was dismissed, and L.D. and Nila McMullan filed for protection under Chapter 11. The case against L.D. McMullan was removed to this Court on December 20, 1994, to be consolidated with the case against Nila McMullan already pending. Trial on the merits was scheduled for May 15, 1995, in the Bankruptcy Court. On March 15, 1995, counsel for the McMullans moved for one more continuance, which was denied.

The McMullans have been in default on their obligations to NBC for more than eight years. This narrative of the case's procedural history illustrates how the McMullans have successfully averted trial for An unreasonable length of time. Nila McMullan's Chapter 13 filing is the most egregious example of the McMullans' bad faith. When Nila McMullan filed her Chapter 13 bankruptcy petition, the jurisdictional limit in a Chapter 13 case for noncontingent, liquidated, unsecured debts was $100,000.00. 11 U.S.C. § 109(e) (1988).[11] Nevertheless, she scheduled $467,434.64 in unsecured debts that were neither characterized as contingent nor unliquidated. Her counsel argued at a hearing on a motion to dismiss the Chapter 13 proceeding that the unsecured debts were contingent because they were disputed

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[11]The jurisdictional limit for unsecured debts was subsequently raised to $250,000. Bankruptcy Reform Act of 1994, 11 U.S.C. § 109(e) (1994).

and, therefore, the debts should not be considered for purposes of determining whether the jurisdictional limit was exceeded. This argument is without any legal foundation.[12] Nila McMullan was clearly ineligible for relief under the provisions of Chapter 13 because the amount of her unsecured debt greatly exceeded the jurisdictional limit.

Nila McMullan was also ineligible for relief under the provisions of Chapter 13 because she had no regular income as required by 11 U.S.C. 109(e) (1994). Her schedules reflected no income for the two years immediately preceding the filing of the bankruptcy petition, and, in fact, she testified that she was essentially a housewife who did part-time bookkeeping for her husband. She said she had only recently started receiving a $400.00 per month salary. The household expenses she listed exceeded her gross income by $4,549.40 a month. Finally, the Chapter 11 schedules filed in early 1995 reflect that Nila McMullan has no income.

The Court believes that the purported salary to Nila McMullan listed in the Chapter 13 case was a contrivance, that she had no regular income of $400.00 per month, and that she was acting in, bad faith when she contended otherwise.

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[12]The law is well-settled that disputing a claim does not make it a contingent debt. Nicholes v. Johnny Appleseed (In re Nicholes), 184 B.R. 82 (Bankr. 9th Cir. 1995); Gould v. Gregg, Hart, Farris & Rutledge, (In re Gould), 137 B.R. 761, 764 (W.D. Ark. 1992) (citing Craig Corp. v. Albano (In re Albano), 55 B.R. 363, 368-69 (N.D. Ill. 1985) and In re Pennypacker, 115 B.R. 504, 507 (Bankr. E.D. Pa. 1990)).

The only reason for filing the Chapter 13 case on behalf of Nila McMullan was to secure another delay in a trial on the merits of the foreclosure action through An intervention of the automatic stay under 11 U.S.C. § 362 (1994).

The defenses advanced at the trial on the merits in this Court were mostly frivolous. The argument that An assignment An sale of An oil and gas interest to L.D. and Nila McMullan did no create a co-ownership interest in Nila McMullan best exemplifies the frivolous nature of the defenses raised by the McMullans. The time has come to liquidate the property in question and distribute the sale proceeds according to law.

The Bankruptcy Code makes no provision for the sale of property by foreclosure. Instead, property sold under the Bankruptcy Code is governed by 11 U.S.C. 363 (1994). The Court has previously ordered that a trustee be appointed in a related case[13] and that this case be administratively consolidated with the related case with the trustee being responsible for the administration of both cases. Therefore, upon the appointment o the trustee in this case, he is directed to liquidate the McMullans' interest in the office building and Bobby Slack oil An gas production lease and oil and gas field equipment by such method as the trustee deems appropriate,

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[13]The related case is Case No. 87-11087 in the Western District of Arkansas, El Dorado Division.

including sale of the interest of a non-debtor.[14]

At any such sale, NBC shall not be entitled to offset bid any of its claimed liens or security interest under 11 U.S.C. § 363(k) (1994) because the validity of its liens and security interests are unresolved.[15] All sales shall be free and clear of liens with liens and other claims of ownership attaching to the proceed of the sale. The proceeds will be subsequently distributed as provided by the Bankruptcy Code at the request of any party in interest.

The Court determines the claims of NBC against Nila McMullan personally to be $639,042.00 and against L.D. McMullan personally to be $29,248.36. The balance of the claim against L.D. McMullan will constitute a secured claim only to the extent of any perfected mortgage lien or perfected security interest in property of the estate.

IT IS SO ORDERED.

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[14]During the pendency of this case NBC has obtained An order of abandonment of the Manorado properties. Therefore, the sale will not include either the real or personal property in the Manorado oil property.

[15]The parties apparently assumed perfection under Arkansas law; however, the issue of perfection as to the leasehold equipment and the oil and gas leases in connection with the Bobby Slack property are to be determined under Louisiana law. Ark. Code Ann. § 4-9-103(1)(b) (Michie 1991); La. Rev. Stat. Ann. § 10:9-103(b)(1) (West 1992); La. Rev. Stat. Ann. § 9:5373, :5367-:5371 (West 1992); La. Rev. Stat. Ann. § 31:203 (West 1992).

/s/ James G. Mixon
JAMES G. MIXON
UNITED STATES
BANKRUPTCY JUDGE

cc: Stephen L. Gershner, Esq.
Post Office Box 1300
Little Rock, AR 72203

Charles R. Camp, Esq.
Michael Massey, Esq.
Herman Ivester, Esq.
111 Center Street, Suite 1200
Little Rock, AR 72201

William S. Meeks, Esq.
Post Office Box 71
Hamburg, AR 71646

U.S. Trustee

Debtors

APPENDIX D

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

Case Number 87-11087

UNITED STATES BANKRUPTCY COURT
Western District of Arkansas
Eldorado Division
Filed Jan.23, 1991
/s/Peggy Carroll, Clerk
Dep. Clerk

RE: McMULLAN, L.D. Case No.: 87-11087
Debtor(s) Chapter 7

ORDER SUSTAINING TRUSTEE'S OBJECTIONS TO CLAIMS

The Court finds that the trustee filed objections, listed below; the court finds further that the claimants were provided notice of the objections and were afforded sufficient opportunity to respond and obtain a hearing; the court finds further that no responses were filed and therefore, trustee's objections to the following claims should be sustained:
Clm #s 1 thru 19.
IT IS SO ORDERED.
DATED this 23rd day of January, 1991.

/s/ James G. Mixon
UNITED STATES BANKRUPTCY JUDGE

cc: Trustee
U. S. Trustee

UNITED STATES BANKRUPTCY COURT
Western District of Arkansas
Eldorado Division

RE: McMULLAN, L.D.
Debtor(s)

Case No.: 87-11087
Chapter 7

NOTICE OF OPPORTUNITY TO RESPOND TO OBJECTION(S) TO CLAIM(S)

NOTICE IS HEREBY GIVEN that the trustee has filed An objection to the following claim(s):
[SEE ATTACHED]
UNLESS WRITTEN RESPONSE IS MADE WITHIN THIRTY (30) DAYS from the date of this notice, the court will enter An order sustaining trustee's objection(s) without further notice. Timely filed responses will be set for hearing by subsequent notice.

DATED: Dec 18 1990.

/s/ Peggy Carroll
Peggy Carroll, Clerk

/s/ Ruby Sullivan
By: Ruby Sullivan
Case Administrator

IMPORTANT INFORMATION: Written response should be captioned the same as this notice; i.e., bear the name of the court, the name of the debtor, and the case number. The response should be titled (Response to Trustee's Objection to Claim). The body of the response should state the reason(s) that the trustee's objection should be overruled. The response should be signed by the claimant (or claimant's attorney) and reflect the claimant's (or claimant's attorney) and reflect the claimant's (or claimant's attorney's) address.

The response must be filed with the Clerk of the Bankruptcy Court, Room 101, U. S. Postoffice & Courthouse, P.O. Drawer 2381, Little Rock, AR 72203 and served on the trustee and the U. S. Trustee. (The response should not be submitted in letter form).

cc: McMULLAN, L. D., Route 4, Box 911, El Dorado, AR 71730

Henry Kinslow, 211 N. Washington, Ste. 101, El Dorado, AR 71730

Wm. Randal Wright, P.O. Box 1317 Hope, Ar 71801

U.S. Trustee

Certificate of Mailing

Claimant(s) names and addresses listed from above.

I hereby certify that this document has been mailed to parties which are reflected thereon and/or by attachment.

/s/18th day of /s/ December, 19/s/90.

/s/ Deputy Clerk

NOTICE OF OPPORTUNITY TO RESPOND TO CLAIM(S)

Claim #1 by Jack Molnaird
d/b/a Molnaird & Mo.
c/o Ian W. Vickery

#2 by Jack Molnaird
c/o Ian W. Vickery

#3 by Jerry Ferguson
c/o Ivan Vickery

#4 by Jack MoInaird
c/o Ian W. Vickery

#5 by Alan Molnaird
c/o Ian Vickery

#6 by Ian W. Vickery

#7 by Byron Bethea
c/o Ian W. Vickery

#8 by Alan MoInaird
c/o Ian W. Vickery

#9 by James L. Silliman
c/o Ian W. Vickery

Clm #10 by Harold Campbell
c/o Ian Vickery

#11 by Dan Byars
c/o Ian Vickery

#12 by James W. Bethea
c/o Ian Vickery

#13 by Eddy Hopkins
c/o Ian Vickery

#14 by Charles Molnaird
c/o Ian Vickery

#15 by Earnest MoInaird
c/o Ian Vickery

#16 by Tommy Sandifer
c/o Ian Vickery

#17 by Jack MoInaird
c/o Ian Vickery

#18 by Billy Sandifer
c/o Ian Vickery
200 North Jefferson, Ste. 516
El Dorado, AR 71730

Clm #19 by National Bank of Commerce
c/o William I. Prewett
423 North Washington
P.O. Drawer 1917
El Dorado, AR 71731

UNITED STATES BANKRUPTCY COURT

Western District of Arkansas

Eldorado Division

Filed Dec. 14, 9:26 AM, 1990

/s/ Peggy Carroll Clerk

Deputy Clerk

IN RE:

L. D. McMULLAN, DEBTOR ..... NO. ED-87-87

CHAPTER 7

OBJECTION TO CLAIMS

Comes the Trustee, Wm.. Randal Wright, and for his objection to Claims, states:

1. That the Trustee objects to the allowance of the following claims:

Claim No. 1 of Jack Molnaird, d/b/a Molnaird & Mo.

Claim No. 2 of Jack Molnaird, d/b/a Molnaird & Mo.

Claim No. 3 of Jerry Ferguson

Claim No. 4 of Jack Molnaird

Claim No. 5 of Alan Molnaird

Claim No. 6 of Ian W. Vickery

Claim No. 7 of Byron Bethea

Claim No. 8 of Alan Molnaird

Claim No. 9 of James L. Silliman

Claim No. 10 of Harold Campbell

Claim No. 11 of Dan Byars

Claim No. 12 of James W. Bethea

Claim No. 13 of Eddy Hopkins
Claim No. 14 of Charles Molnaird
Claim No. 15 of Earnest Molnaird
Claim No. 16 of Tommy Sandifer
Claim No. 17 of Jack Molnaird
Claim No. 18 of Billy Sandifer

That this objection is based on the fact that there is no evidence of a perfected lien on any property of Debtor and the claims are not secured interests as defined by the U. S. Bankruptcy Code; that said claims should not be allowed as secured claims; and that any distribution pursuant to §726 should be as unsecured claims.

2. That the Trustee objects to the allowance of Claim No. 19 of National Bank of Commerce of El Dorado. That this objection is based on the fact that this claim is secured by property which has been liquidated; that the Trustee is unable to determine the amount of deficiency to be allowed as An unsecured claim; that any distribution pursuant to §726 based on a deficiency should be disallowed due to the failure of the creditor to establish that any deficiency, or the specific amount allowed, was over and above the value of the collateral that is part of .any security of the creditor; and that this objection is not to the secured claim of the creditor, but to any deficiency.

WHEREFORE, Trustee prays that claims numbered 1 through 18, inclusive, not be allowed herein as secured claims; that they be ordered to be unsecured claims; that

claim numbered 19 not be allowed herein; that this Court enter the appropriate order of distribution herein; and that he be granted any and all other just and proper relief.

/s/ Wm.. R. Wright
WM.. RANDAL WRIGHT (78176)
Attorney at Law
P. 0. Box 1317
Hope, Arkansas 71801
(501) 777-5483

UNITED STATES BANKRUPTCY COURT
Western District of Arkansas
Eldorado Division

IN RE:
L.D. McMULLAN, No.ED-87-87
Debtor Chapter 7

NOTICE OF OBJECTION TO CLAIMS

NOTICE is hereby given that the undersigned Trustee has filed An objection to the following claims:

Claim No. 1 of Jack Molnaird, d/b/a Molnaird & Mo.
Claim No. 2 of Jack Molnaird, d/b/a Molnaird & Mo.
Claim No. 3 of Jerry Ferguson
Claim No. 4 of Jack Molnaird
Claim No. 5 of Alan Molnaird
Claim No. 6 of Ian W. Vickery
Claim No. 7 of Byron Bethea
Claim No. 8 of Alan Molnaird
Claim No. 9 of James L. Silliman
Claim No. 10 of Harold Campbell
Claim No. 11 of Dan Byars
Claim No. 12 of James W. Bethea
Claim No. 13 of Eddy Hopkins
Claim No. 14 of Charles Molnaird
Claim No. 15 of Earnest Molnaird

Claim No. 16 of Tommy Sandifer

Claim No. 17 of Jack Molnaird

Claim No. 18 of Billy Sandifer

Claim No. 19 of National Bank of Commerce of El Dorado

UNLESS WRITTEN RESPONSE is made within thirty (30) days from the date of this Notice, the Court will enterAnn order sustaining Trustee's Objections without further notice. Timely filed responses will be set for hearing by subsequent notice. Written responses should be captioned the same as this Notice; i.e., bear the name of the Court, the name of the Debtor, and the case number. The response should be titled "Response to Trustee's Objection to Claim." The body of the response should state the specific reason(s) that the Trustee's objection should be overruled. The response should be signed by the claimant (or claimant's attorney) and reflect the claimant's (or claimant's attorney) address. The response must be filed with the Clerk of the Bankruptcy Court, Room 101, U. S. Post Office and Courthouse, P. 0. Drawer 2381, Little Rock, Arkansas 72203 and served on the undersigned Trustee. The response should not be submitted in letter form.

DATED this 11th day of December, 1990.

/s/ Wm.. R. Wright

WM.. RANDAL WRIGHT (78176)
Attorney at Law
P. 0. Box 1317

Hope, Arkansas 71801
(501) 777-5483

APPENDIX E

STATUTES

Louisiana Title 3, C.C. Art. 1839

Art. 1839. Transfer of Immovable property

A transfer of immovable property must be made by authentic act or by act under private signature. Nevertheless, An oral transfer is valid between the parties when the property has been actually delivered and the transferor recognizes the transfer when interrogated on oath.

An instrument involving immovable property shall have effect against third persons only from the time it is filed for registry in the parish when the property is located.

Louisiana R. S. 9:2743

Art. 2743. Acknowledgment of private act prior to recordation

The record of An act under private signature, purporting to be a sale or exchange of real property, shall not have effect against creditors or *bono fide* purchasers unless, previous to its being recorded, it was acknowledged by the party, or proved by the oath of one of the subscribing witnesses, and the certificate of such acknowledgment be signed by the parish recorder, a notary, or a justice of the peace, and recorded with the instrument.

Louisiana R. S. 9:2744

Art. 2744. Effect of registry

It shall be the duty of the recorder to indorse on the back of each act deposited with him the time it was received by him, and to record the same without delay in the order in which they were received; and such acts shall have effect against third persons only from the date of their being deposited in the office of the parish recorders.